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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of The Merger of MCI Communications
Corporation and British Telecommunications plc
GN Docket No. 96-245

Dear Secretary Caton:

Enclosed are an original and four copies of France Telecom's Reply Reply
Comments pursuant to the to the Commission's Public Notice (DA 96-2079) released
December 10, 1996, in the above-captioned proceeding. Copies of our Comments were
hand-delivered or mailed today in accordance with the attached service list.

Sincerely yours,

Theodore W. Krauss
France Telecom, Inc.
Vice President
Legal and Regulatory Affairs

Enclosures

cc: International Reference Room
Wireless Reference Room
ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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The Merger of MCI Communications)
Corporation and British)
Telecommunications plc)
)

GN Docket No. 96-245

REPLY REPLY COMMENTS OF FRANCE TELECOM

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March 17, 1997

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_____)

REPLY REPLY COMMENTS OF FRANCE TELECOM

Pursuant to the Commission's Public Notice (DA 96-2079) released December 10, 1996, France Telecom ("FT") respectfully submits its Reply Reply Comments on the request by MCI Communications Corporation ("MCI") and British Telecommunications plc ("BT"), collectively the BT-MCI Applicants, for Commission approval of the proposed merger of BT and MCI.¹

Introduction

FT's interest in the BT-MCI Application is manifold since the proposed merger would affect competition not only on the very large US/UK route but also on the transatlantic route between Europe and the US, as well as worldwide and throughout Europe and the US.

FT, in its own right, is the fourth largest telecommunications company in the world and the second largest in Europe, and as such has a keen interest in the maintenance of fair competition worldwide. Furthermore, FT is a shareholder in the three-way Global One

¹ MCI and BT filed with the FCC a three volume application with supporting documents. See The Merger of MCI Communications Corporation and British Telecommunications plc, Applications and Notification, Volumes One, Two and Three (December 2, 1996) ("BT-MCI Application").

global telecommunications services joint venture along with Sprint, Deutsche Telekom and FT which competes with the current BT-MCI joint venture named "Concert." Finally, FT has a direct 10% investment in Sprint, a competitor of MCI. As the Commission is aware, FT's investment in Sprint of nearly \$2 billion is the second largest telecommunications investment in the United States - - second only to the current 20% BT investment in MCI.²

FT hereby makes reference to its January 24, 1997 Comments submitted earlier in this proceeding, in which it addressed several concerns which arise due to the proposed merger of BT-MCI. On February 24, 1997 the BT-MCI Applicants filed Opposition & Reply comments (the "Opposition & Reply") in this proceeding to which FT hereby replies.

Summary

In summary, the Opposition & Reply comments do not convincingly refute FT's earlier Comments. However, FT has decided to submit these Reply Reply Comments to clarify certain misleading statements made by the BT-MCI Applicants in their Opposition & Reply, as well as to reiterate FT's concern that the proposed merger will jeopardize fair competition unless several critical issues are addressed, including:

- the UK's unequal access regime (no dialing parity in call by call or carrier preselection);
- BT-MCI's power to influence transatlantic cable capacity to its benefit;
- the need for transparency and structural separation safeguards;

² FT's partner in Global One, Deutsche Telekom, also invested an equal amount in Sprint.

- the need for an explicit requirement that BT-MCI continue to comply with the Commission's International Settlements Policy and its rule prohibiting special concessions between BT and MCI, coupled with the requirement of a separate and in-depth proceeding to review any future request by the BT-MCI Applicants to deviate from such rules;
- the importance of maintaining a level playing field to allow fair competition between the BT-MCI Applicants and their competitors.

Consistent with its position in other proceedings,³ FT does not, at this point in time, wish to encourage the Commission to micro-manage the liberalization process in any jurisdiction outside of the United States, including the UK. However, the UK telecommunications regime is far from perfect and the proposed merger would adversely affect competition. FT trusts that the Commission will see through, and not be intimidated by, the BT-MCI Applicants' holier than thou attitude in this and other proceedings where the UK or other foreign markets are scrutinized. FT respectfully urges the Commission to ensure, in close coordination with the European Commission, OFTEL, the US Department of Justice ("DoJ") and other competent regulatory authorities, that at the end of the day the conditions placed on the proposed merger be no less burdensome than those already imposed by the FCC, the DoJ and the European Commission on the Global One alliance. What FT seeks is a level playing field where fair competition prevails and the market is allowed to yield maximum benefits to consumers.

³ See for e.g. September 23, 1996 Reply Comments of FT in Sprint Order proceeding (Sprint Corporation, 11 FCC Rcd 1850, at 1872 (1996) ("Sprint Order").

I. Cable Capacity

A. Clarification of Misleading Statements by the BT-MCI Applicants.

FT would like to clarify several misleading statements by the BT-MCI Applicants in the Opposition & Reply which generally call into question the BT-MCI Applicants' credibility.

Contrary to what the BT-MCI Applicants would have the Commission believe⁴, FT does not have a substantial amount of currently unutilized capacity where Sprint is FT's corresponding party, although FT does have a limited amount of currently unused capacity in particular with AT&T (most of this capacity being set aside for 1997-1998 requirements). Nor does FT have substantial excess end-to-end capacity on TAT 12/13. In fact, having no whole circuits on TAT 12/13 at the end of 1996, FT initiated in January 1997 the process of acquiring whole MIUs on TAT 12/13 in order to meet expected new requirements.

Furthermore, it is disingenuous to present Sprint, DT and FT as the "Global One Parties" as the BT-MCI Applicants do when discussing ownership of the TAT 12/13 cable system in the Opposition & Reply.⁵ First, each of Sprint, DT and FT are independent operators. Their interests in the TAT 12/13 cable system are not pooled together under a single corporate group as the BT and MCI interests would be in the event the proposed merger were approved.

⁴ Opposition & Reply at 7 & n. 12.

⁵ Id.

Second, Global One is a separate corporate entity from Sprint, DT and FT, and Global One has no ownership interest in TAT 12/13.

The attempt by the BT-MCI Applicants to compare their combined ownership of 597 whole MIUs on TAT 12/13 to an inappropriately bundled reference to Sprint's, DT's and FT's respective interests in TAT 12/13, is a vain attempt to disguise what would be the BT-MCI Applicants prevalent position among the owners of such cable system.⁶

B. The BT-MCI Applicants are in a Position to Influence TAT 12/13 Cable Capacity Matters.

In the context of the consortium co-ownership system of TAT 12/13, only 8 out of 78 co-owners possess greater than a 3% ownership interest. The three co-owners who currently hold the largest percentages of ownership are AT&T with 22.7%, BT with 17.2% and MCI with 16.7%, respectively. Thus a combined BT-MCI will hold approximately a 34% ownership interest in TAT 12/13.⁷ In comparison with the other co-owners, a BT-MCI combined owner would be in a position to assemble a majority vote within the consortium much more easily than the other co-owners.

Given the BT-MCI Applicants' prevalent ownership position on TAT 12/13, it is only appropriate that BT has currently set aside 63 of its MIUs for resale to other operators who are not co-owners and has stated that it will make more available if it can

⁶As acknowledged in the Opposition & Reply, even if Sprint's, DT's and FT's ownership of whole MIU interests in TAT 12/13 are totaled, such combined interest represents a mere third of the BT-MCI Applicants' combined interest (200 vs. 597 whole MIUs). Id.

⁷ By comparison FT's interest in TAT 12/13 is 4.1% (Sprint holds 4.5% and DT 7.7%).

acquire more.⁸ The BT-MCI Applicants are right to draw attention to such offer by BT, since, of course, other co-owners which do not enjoy the same abundant supply situation cannot necessarily be expected to make capacity available. However, as presented in the BT-MCI Opposition and Reply,⁹ it should be noted that such BT offer excludes access to its capacity by all 77 other co-owners, including operators such as Mercury and MFS (and presumably MFS' merger partner Worldcom). Also, the few eligible new entrants seeking capacity on TAT 12/13 would be well advised to quickly take BT up on its offer since the BT-MCI Applicants offer no assurance that such offer will remain outstanding once regulatory scrutiny of the proposed merger is completed.

Furthermore, the BT-MCI Applicants' prevalent ownership position on TAT 12/13 may well affect in other ways how, and how much, capacity will be made available to other operators seeking access on TAT 12/13. For example, the TAT 12/13 co-owners are currently investigating the possibility of upgrading the TAT 12/13 network in order to double its capacity. Given its prevalent ownership and consequent voting position within the co-ownership group, a combined BT-MCI may privilege itself in matters such as the allocation of the upgraded capacity in TAT 12/13 or on issues such as the possible use of protection fiber pair capacity as a way to overcome the temporary shortage of capacity.

FT urges the Commission and other competent regulatory authorities to take the foregoing into careful consideration in reviewing the proposed merger.

⁸ Opposition & Reply at 7, note 12.

⁹ Id.

II. Lack of Equal Access is a Barrier to Entry and to Effective Competition in the UK and on the Transatlantic-Atlantic Route

The Commission should take note that with a BT-MCI merger, BT will be the only carrier to both benefit from equal access in the US and enjoy preferential access in the UK because of the lack of equal access in the UK.

Both under the new and the current regulatory regime in the UK, equal access is not and will not be implemented in the UK. OFTEL has confirmed this decision in a Statement dated July 1996 issued by the Director General of Telecommunications, entitled "OFTEL's Policy on Indirect Access, Equal Access and Direct Connection to the Access Network".

This means that a customer with a BT telephone line (83% of telephone lines are BT telephone lines) wishing to make a long distance call must either:

- dial the 11 digits making up the called party number: the call is then routed entirely on BT's network; or
- dial an indirect access code: 132 for Mercury or more generally a four digit code (1602 for instance for ACC), and then dial the 11 digits that make the called party number.

Customers do not like to have to dial the indirect access codes (3 or 4 more digits in addition to the 11 digits phone number). Moreover, they do not always remember to dial them before every long distance call. Although the access code can in some circumstances be recorded in a memory button of the customer's telephone, this is costly and burdensome for customers:

- 1) the customer needs to have an advanced telephone with memory buttons;
- 2) the customer needs to know how to program the memory buttons;
- 3) even if the customer has a programmable phone, he or she still needs to remember to first push the memory button each time a long distance call is made; and
- 4) there are other problems such as the fact that memory buttons can be deprogrammed easily (by power failure), the customer can end up having no indirect access code in the memory, and therefore route the call via BT while the customer thinks it is routed via his or her chosen long distance operator.

The above demonstrates how the indirect easy access system is not at all customer friendly. What is dubbed "easy access" by OFTEL is in fact "uneasy access". By making it inconvenient and uncomfortable to use the indirect access service, this system benefits BT, which is the long distance operator by default.

This situation will worsen over the next years: OFTEL is proposing to increase the length of the indirect access codes to 5 or 6 digits.¹⁰ Therefore, long distance operators in the UK will continue to be penalized by unequal competitive conditions for years to come.

By comparison, the French Telecommunications Act of 26 July 1996 states that a national numbering plan shall ensure equal access for users to the various telecommunications networks and services and equivalent numbering formats (Art. L. 34-

¹⁰ See § 62 of "The National Numbering Scheme", OFTEL Statement, issued by the Director General of Communications, January 1997.

10) as of January 1, 1998. The French Minister for Post and Telecommunications has also recently announced that carrier pre-selection should be available in France as of January 1, 2000.¹¹

FT recognizes that different regulatory approaches can lead to the realization of similar objectives, however, FT believes that in order to ensure effective and fair competition in the UK market, equal access (dialing parity in call by call or pre-selection) is necessary. While, for reasons of jurisdiction and comity, it may not be appropriate for the Commission to impose equal access on the UK, it is important that the record in this proceeding clearly reflect that the current UK regime is marred by important flaws such as its system of unequal access. If the Commission refrains from requiring equal access in the UK as a condition to approval of the proposed merger, FT respectfully requests that the Commission avoid creating a special "English exception" and: (i) refrain from imposing in other proceedings conditions aimed at reforming foreign markets, and (ii) undo conditions it has imposed in other proceedings which are aimed at influencing foreign market conditions.

III. The Commission Should Ensure a Level Playing Field

The BT-MCI Applicants call for the Commission to refrain from rewriting the ground rules for competition and interconnection in the UK.¹² As a general policy matter, FT agrees, and respectfully suggests, that the Commission should not, and presumably

¹¹ "Deux grands chantiers en 97: la libéralisation du 1er janvier 98 et l'ouverture du capital de France Télécom", *RadioCom Magazine*, no. 56, novembre-décembre 1996.

¹² Opposition & Reply at 3.

never intended to, micro-manage the liberalization processes in any jurisdiction outside the United States.

However, no regime is perfect, and the UK is far from offering an exception to this rule notwithstanding the advocacy by the BT-MCI Applicants.¹³ Thus, if, as FT believes, the Commission is truly interested in encouraging worldwide competition and a level playing field where the market is allowed to yield maximum benefits to consumers, FT respectfully requests that the Commission ensure, in coordination with the European Commission, OFTEL, the DoJ and other competent regulatory authorities, that the conditions placed on the proposed merger be no less burdensome than those imposed by the Commission, the DoJ and the European Commission on the Global One alliance. Such level playing field can be ensured through additional conditions on Concert and the proposed merger, or the removal of conditions on the Global One alliance, or a combination thereof.

The BT-MCI Applicants make no effective argument for exempting their proposed merger from conditions. On the contrary, they proffer, for example, the bizarre logic that if no complaint has been made to the FCC alleging discrimination by BT in favor of MCI since the formation of the BT-MCI alliance in 1994, then there is no reason to impose additional conditions on a yet more - - fully - - integrated BT-MCI venture.¹⁴ Just because no complaint has been filed following the initial non-controlling 20% investment by BT in MCI does not mean that no abuses will result from 100 % control of MCI by BT.

¹³ See for e.g. the discussion, supra, of the lack of equal access in the UK.

¹⁴ Opposition & Reply at 5.

The UK and US market places are not perfect, and abuses of the proposed BT-MCI venture's dominant position in the UK and on the US-UK route cannot be excluded. Conditions, imposed by the appropriate regulators having jurisdiction,¹⁵ such as the conditions suggested in FT's comments to the European Commission¹⁶ and in FT's earlier Comments in this proceeding, are required to safeguard fair competition and retain a level playing field - - at least until the regulatory restrictions imposed on Global One and its parent companies are removed.

For example, transparency and accountability safeguards are necessary to ensure fair competition if the proposed merger is allowed to go forward. As noted in FT's earlier Comments, structural separation between the domestic (UK and USA) and the international operations of a combined BT-MCI, and related requirements, should be imposed.¹⁷ FT respectfully suggests that the appropriate regulatory authority, whether it be the Commission, the DoJ, OFTEL and/or the European Commission, should take steps to impose the structural conditions required to promote the emerging competition in the US and Europe. FT encourages the Commission, the DoJ, OFTEL and the European

¹⁵ For reasons of comity and jurisdiction, the FCC may well not be the appropriate regulator to impose certain conditions, but FT wishes to encourage the FCC to coordinate on such matters with the European regulatory authorities.

¹⁶ The European Commission instituted a proceeding on the proposed BT-MCI merger. See Prior Notice of a Proposed Concentration, Case No. IV/M.856 - BT/MCI (II), (96/C 391/11), published in the Official Journal of the European Communities, December 28, 1996 ("EC Proceeding"). France Telecom has submitted comments in the EC Proceeding.

¹⁷ FT Comments at 6.

Commission to carefully coordinate their efforts to evaluate and to minimize the adverse impact on competition in the event the proposed merger is approved.

The importance of transparency and regulatory control was recently noted by Mr. Don Cruickshank, OFTEL's Director General, when he addressed the Commons Public Accounts select committee and stated that one of his concerns was "his ability to continue to get information about BT's activities once it had converted itself into an Anglo-US company with offices on both sides of the Atlantic."¹⁸ Mr. Cruickshank's remarks illustrate the difficulties that may arise if structural separation were not imposed and regulators (and BT-MCI's competitors) lost the ability to monitor BT-MCI's activities to prevent anti-competitive behavior.

IV. The Prohibition Against Special Concessions and the Commission's International Settlements Policy Should Continue to Apply to the BT-MCI Applicants

FT's initial Comments urged compliance by BT-MCI with the Commission's International Settlement's Policy (ISP)¹⁹ and the no special concessions requirement. FT notes that BT and MCI are not seeking a waiver of the Commission's ISP in the BT-MCI Application.²⁰ While FT agrees with the pro-competitive thrust of the Commission's

¹⁸ See "Ofel chief hints at BT controls", *The Independent*, November 19, 1996.

¹⁹ See Implementation and Scope of the International Settlements Policy for Parallel Routes, CC Docket No. 85-204, Report and Order, 51 Fed. Reg. 4736 (Feb. 7, 1986) (ISP Order), modified in part on recon., 2 FCC Rcd 1118 (1987) (ISP Reconsideration), further recon., 3 FCC Rcd 1614 (1988). See also Regulation of International Accounting Rates, 6 FCC Rcd 3552 (1991), on recon., 7 FCC Rcd 8049 (1992); Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146 (1996) ("Accounting Rate Policy Statement").

Flexibility Order,²¹ we reemphasize that if and when BT and MCI do seek approval of an alternative arrangement, something more than an FCC expedited process will be appropriate.

Due to the importance of this issue, FT wishes to reiterate the points made in this regard in FT's earlier Comments.

Basically, FT believes the Commission's International Settlements Policy, and more generally the Commission's interdiction against "special concessions"²², should continue to explicitly apply to BT and MCI. BT and MCI should be required to provide US-European service on the basis of proportionate return and equal division of non-discriminatory arm's length accounting rates and without special concessions. In the event the merger is approved, the Commission should specifically require BT, MCI, and the merged entity and its affiliates, to strictly comply with the Commission's International Settlements Policy and its prohibition against special concessions. Furthermore, the Commission should specify that any deviation from such rules should require a separate public proceeding with full opportunity for interested third parties to comment and for the Commission to analyze in depth such matter. FT notes that the Flexibility Order would require an expedited public process.²³ However, due to the important and novel public

²⁰ Opposition & Reply at 30.

²¹ Regulation of International Accounting Rates, CC Docket No. 90-337 (Phase II), Fourth Report and Order (released December 3, 1996) ("Flexibility Order").

²² MCI Communications Corp., 9 FCC Rcd 3960, 3970 (1994); 47 C.F.R. §63.14.

²³ See Flexibility Order at ¶ 57; 47 C.F.R. §64.1002.


interest issues which would be raised by the prospect of allowing a merged BT-MCI to deviate from the Commission's ISP, and recognizing MCI's US domestic market share and the size of the UK-US route, the Commission should ensure that the matter receives careful public scrutiny and formal Commission staff analysis and action.

Furthermore, the issue of whether or not to impose structural safeguards is related, but not exclusively tied to, the request that BT-MCI continue to comply with the ISP. FT believes that structural safeguards would help ensure compliance by BT-MCI with the Commission's ISP and no special concessions requirement (and would facilitate subsequent compliance monitoring in the event such rules are relaxed for a merged BT-MCI and its competitors on a level playing field basis). However, as noted above and in FT's earlier Comments, structural safeguards are also called for because of other reasons such as the need to ensure transparency and accountability.


Conclusion

FT thanks the Commission for the opportunity to provide comments in this proceeding and respectfully suggests that, if the Commission approves the BT-MCI Application, the Commission should impose the conditions presented in FT's initial Comments and in these Reply Reply Comments, to the extent such conditions fall within its jurisdiction as determined in coordination with the European Commission, the DoJ and OFTEL..

Respectfully submitted,



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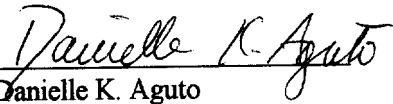


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March 17, 1997

CERTIFICATE OF SERVICE

I, Danielle K. Aguto, attorney, hereby certify that on this 17th day of March, 1997, a copy of the foregoing Reply Reply Comments was delivered or mailed first-class to the parties listed below.


Danielle K. Aguto

Dated: March 17, 1997

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